WASHINGTON COUNTY, STATE OF MINNESOTA.

In Error to the Circuit Court of the United States, for the District of Minnesota.

BRIEF FOR PLAINTIFF IN ERROR.

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SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, as Executor of the Last Will and Testament of SOPHIA M. BRISTOL, Deceased,

Plaintiff in Error,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is a writ of error to the Circuit Court of the United States for the District of Minnesota. The main question to be determined is whether certain taxes levied by the County of Washington, State of Minnesota, against a citizen and resident of the

state of New York on account of indebtedness held against residents of Minnesota secured by mortgage on lands in Minnesota, are valid taxes.

The case was tried in the Circuit Court on stipulated facts, which stipulation is incorporated in the bill of exceptions printed in the transcript, pages 47 to 53. The Circuit Court made findings of fact in substantial accordance with the stipulation, and these findings are printed in the transcript, pages 41 to 45.

The taxes in question were levied by the County of Washington during each of the years 1883 to 1894, inclusive, under the statutory heading which will be hereafter explained, "Credits, other than of bank, banker, broker or stock jobber." (Transcript, p. 43, findings, par. X). A schedule of the taxes and penalties showing the amount claimed for each year will be found in the findings (Transcript, p. 44-45). The judgment here for review was for $64,684.78, (Transcript, p. 46) and is rendered against the estate of Sophia M. Bristol, deceased.

Sophia M. Bristol was the person who was assessed. She was at all times a resident and citizen of New York and was never during the period in question within the State of Minnesota except temporarily (Findings, par. 1). Her father, Cyrus Jefferson, who died in November, 1883, was also a citizen and resident of New York and during the 14 years prior to his death he had loaned large sums of money to various persons residing in Minnesota upon their notes, payable to his order at Stillwater,

in Washington County, and secured by mortgages on real estate in Washington and adjoining counties in Minnesota. All these loans and investments were made and the notes and mortgages taken by and through William McCluer of Stillwater, who was the agent of Jefferson. McCluer during this time made the loans and took and retained the notes and securities, collecting and re-loaning principal and interest at Stillwater and kept said moneys invested as nearly as practicable, save as to such moneys as Jefferson drew from time to time to pay his debts and living expenses (Findings, par I). Jefferson during this time had also loaned $18,000.00 through McCluer, taking the notes and mortgages to his daughter, Sophia M. Bristol. After the death of Jefferson, on December 8, 1883, all his notes secured by mortgages in Minnesota passed to Sophia M. Bristol as her share of his estate. She thereupon employed said McCluer and one Charles M. McCluer (both residents of Stillwater) as her agents in and about said loaning business, giving to them all the authority William M. McClure had before exercised for her father and also giving them a written power of attorney to satisfy and sell mortgages. The agents continued to carry on the business, retaining moneys collected by them, the moneys in their hands being deposited in bank at Stillwater as their money to their credit (Findings, par. III).

In March, 1885, the method of conducting the business changed to this extent; that all the notes in the hands of the agents were then delivered to

Sophia M. Bristol, and all new notes thereafter taken were sent to Sophia M. Bristol and were always kept by her at her home in New York, but were payable as before at the office of her agents in Stillwater. All mortgages were still retained by the agents and the notes were sent the agents from time to time whenever required by them for the purpose of renewal, payment, collection, or foreclosure. The agents continued making loans in the name of Sophia M. Bristol, sometimes under the direction of James Bristol, her husband, but generally upon their own judgment, and remitted money to Sophia M. Bristol whenever she called for the same. What was not received by her was re-invested. Sophia M. Bristol received large sums of money at various times from said agents and all moneys in their hands were always subject to her order. (Findings, par. IV.)

In August, 1890, William M. McClure died and thereafter Charles M. McCluer continued to act as sole agent until in November, 1890, when Sophia M. Bristol revoked the power of attorney authorizing him to satisfy mortgages and thereafter executed satisfactions herself (Findings, par. V).

The business went on in this way until the death of Sophia M. Bristol in the month of August, 1894 (Findings, par. VI).

Sophia M. Bristol had no taxable property in Washington County during any of the years mentioned other than the loans and indebtedness which were secured by mortgage on lands in Minnesota and which were under the charge and management of her agents (Findings, par. VII).

The court finds that said loans acquired and had a *situs* for taxation in Stillwater, Washington County, Minnesota (Findings, par. VIII).

In October, 1894, the will of Sophia M. Bristol was duly admitted to probate in the probate court of Ramsey county, Minnesota, and James Bristol, the plaintiff in error, a citizen of New York, was appointed executor of the will and duly qualified (Findings, par. XII).

The plaintiff in error offered in evidence in the court below certain depositions which tended to prove that Sophia M. Bristol had paid taxes upon this same property at her home in Gainesville, in the State of New York the same years for which the taxes in question were levied. This evidence was objected to by the defendant in error as being immaterial and the objection was sustained (Bill of Exceptions, Transcript, p. 53).

During the years from 1883 to 1894 the County of Washington seems to have taken no steps for the collection and enforcement of the taxes, but on the 24th day of September, 1894, Sophia M. Bristol having died in the state of New York, and her will having been probated in that state, a petition was filed in the probate court of Ramsey county, Minnesota, for the probate of her will, in Minnesota. (Transcript, p. 1-2.) The will was in due course admitted to probate. Appraisers of the estate were appointed and James Bristol, the executor, returned to the probate court of Ramsey county an inventory of the estate of the deceased which had come to the executor in the state of Minnesota (Transcript, pp.

18-19). This inventory comprised real estate exclusively except 5 bonds of Stevens county, Minnesota, of $1,000.00 each. It will be noted that none of the indebtedness against which the taxes were assessed is comprised in the inventory.

The county of Washington then filed a claim in the probate court for these taxes, amounting to $64,684.78 (Transcript, pp. 20-23).

The executor filed an answer and objection to this claim setting up and expressly alleging and claiming that the tax levied was in violation of the Constitution of the United States in this; that thereby a citizen of New York is deprived the privileges and immunities granted to the citizens of the state of Minnesota; also that it deprives a person of property without due process of law, and that thereby private property is taken for public use without just compensation, and that the levy, assessment and collection of said tax is contrary to the Fourteenth Amendment of the Constitution of the United States (Transcript, pp. 23-25). The executor filed a petition to remove the controversy to the Circuit Court of the United States and thereupon it was so removed (Transcript, pp. 26-29).

In the Circuit Court a stipulation was filed waiving a jury and the cause was tried before the court. A repleader was ordered and formal pleadings setting forth the contention of the parties were filed (Transcript, pp. 30-34). In the answer of the executor he again plead and asserted that the assessment, levy and collection of said taxes was in violation of the Constitution of the United States, par-

ticularly of the Fourteenth Amendment, as being the enforcement of a law abridging the privileges and immunities of citizens of the United States, depriving a person of property without due process of law, and denying the equal protection of the law. Also the answer further plead that all the said taxes assessed prior to the year 1889 had been due and payable and the cause of action thereon accrued more than six years prior to the filing of the plaintiff's claim in the probate court, and therefore the taxes levied during the years 1883 to 1888 inclusive were barred by the statute of limitations of the State of Minnesota (Transcript, p. 34).

The writ of error is taken direct to this court from the Circuit Court under the provisions of section 5 of the act of March 3, 1891, "in any case that involves the construction or application of the Constitution of the United States" * * * "in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

It is stipulated and found that the taxes in question were assessed against "personal property of said Sophia M. Bristol, deceased, consisting of 'credits other than that of bank, banker, broker or stock jobber,' and that said assessments were each in fact based upon credits due Sophia M. Bristol on promissory notes of various persons," etc. The effect of this finding and the nature of the taxes in question can be perfectly understood only by reference to the laws of Minnesota under which the assessments were made.

The law of Minnesota in the first place does not subject mortgages to *real estate* taxes. Under the statutes of Minnesota real estate whether incumbered or unincumbered is taxed against the owner of the fee, or equity of redemption, as land and at its full value without deduction for mortgages.

Section 1510 Minnesota Compiled Statutes, 1894, vol. 1, provides:

> "Personal property shall, for the purposes of taxation, be construed to include all goods, chattels, moneys, credits and effects, wheresoever they may be."

Section 1511 provides:

> "The term 'credits,' wherever used in this act, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, *and all claims and demands secured by deed or mortgage, due or to become due.*"

Under section 1515 a resident agent is obliged to list separately and in the name of his principal all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney on account of any other person; and also all moneys deposited subject to his order, check or draft, and credits due from or owing by any person or persons.

Section 1524 provides for valuation by the assessor and for the different items making up the list of assessable property. Subdivision 22 of this section reads, "the amount of credits other than of bank, banker, broker or stock jobber." The findings and

stipulation in the record have reference to this provision and show that the assessment in question was an assessment on credits; that is, debts due from residents of Minnesota to Sophia M. Bristol.

Sections 1567, 1568 and 1569 provide for the collection of delinquent personal property taxes. It is not necessary as we conceive to quote these sections in full. Briefly stated they provide as follows: that the county treasurer shall make a list of all such delinquent personal property taxes and certify the same to the clerk of the district court of his county, and the clerk shall thereupon issue his warrants to the sheriff of the county directing him to collect, which he may do by distraint of sufficient goods and chattels belonging to the person charged with such taxes, if found within his county; if the sheriff shall be unable to collect he shall so return to the clerk of the court; the clerk shall then deliver a list to the board of county commissioners who may cancel such taxes as they are satisfied cannot be collected; thereupon after the adjournment of the board the list so revised is again filed with the clerk of the district court, who issues and delivers to the sheriff a citation to the person taxed to appear on the first day of the next general term of the district court to show cause why he shall not pay the tax and penalty; the statute provides for hearing and trial of objections in the district court and for the rendition of a personal judgment against the person taxed; and also provides that if the person be a non-resident so that the citation cannot be served, then an action may be commenced by issuing and

publishing a summons and by attachment as is provided with reference to other actions and proceedings of a civil nature; the action shall be commenced and maintained in the name of the county against the person charged with such tax (Section 1569).

Section 1623 provides as follows;

> "The taxes assessed upon real property shall be a lien thereon from and including the first day of May, in the year in which they are levied, until the same are paid, but as between grantor and grantee, such lien shall not attach until the first day of January of the next year thereafter. The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the county treasurer."

This section and other Minnesota statutes have been recently considered in the Circuit Court of Appeals of the Eighth Circuit in the case of *State of Minnesota v. Central Trust Company of New York*, 94 Fed. Rep. 244, in which case the court held that under the laws of Minnesota personal property taxes were a lien, not only against the property taxed, but against *all the property* of the person taxed.

The Supreme Court of Minnesota in several cases has held that personal property taxes are under the Minnesota statutes taxes not against the property but against the person; that they are personal claims giving rise to a personal liability and personal judgment. They may be filed in probate court as claims against an estate. *In re Jefferson,*

35 Minn. 215, 217. Where several persons are joint owners of a credit or indebtedness the interest of each must be separately assessed against him and the whole credit or indebtedness cannot be taxed as a piece of real estate owned by joint owners might be taxed. The assessment of personality is a proceeding designed to reach the person ultimately, while the assessment of real estate is a proceeding against the land itself. *State v. Rand*, 39 Minn. 502, 510; see *Clarke v. County of Stearns*, 47 Minn. 552; *State v. Red River Valley Elevator Co.*, 69 Minn. 131.

The fact that taxes on personal property in Minnesota are a tax against the person, not the property, clearly appears from the holding of the Supreme Court of the state in the case of *State v. Moffett*, 64 Minn. 292, where the court sustains the constitutionality of a statute of Minnesota which provides that a person when making up the amount of credits he is required to list for taxation, may deduct from the gross amount of such credits the amount of all his *bona fide* indebtedness. What is really taxed is the balance of a person's credits over the amount of his debts. This statute is inconsistent with any other theory than that the tax is a personal tax.

A personal judgment was rendered in this case against the estate of the deceased, not a judgment merely enforcing a lien against the property taxed; this, too, where the record did not show that the property taxed was in existence or in the control of the probate court.

The questions in this case are as follows:

First. Whether the assessments in question were valid.

Second. Whether the rendition of a personal judgment was proper.

Third. Whether the statute of limitations had not at least barred any proceeding for the taxes of the years 1883 to 1888 inclusive.

ASSIGNMENTS OF ERROR.

The Court erred:

1. In holding that the said taxes were valid taxes, not violating the provisions of the fourteenth amendment to the Constitution of the United States, to the effect that no state shall deprive any person of life, liberty, or property without due process of law.

2. In holding that the said taxes were valid taxes, not violating the provisions of the fourteenth amendment to the Constitution of the United States, to the effect that no state shall make any law which shall abridge the privileges and immunities of citizens of the United States.

3. In holding that the state of Minnesota may assess, levy and collect taxes against a non-resident on account of debts due him from residents, and that such assessment, levy, and collection were not in violation of the Constitution of the United

States and particularly of the fourteenth amendment.

4. In holding that the situs of the indebtedness due Sophia M. Bristol, deceased, upon which the taxes in controversy were assessed, was for purposes of taxation in the city of Stillwater, State of Minnesota.

5. In holding that the situs of the credits of Sophia M. Bristol, on which the taxes in question were assessed, was Stillwater, Minnesota, after March, 1885, when the notes evidencing the same were in the possession of Sophia M. Bristol at her home in New York State.

6. In rendering a *personal* judgment against the estate of Sophia M. Bristol.

7. In holding that all remedy to collect taxes assessed during the years 1883 to 1888, inclusive, was not barred by the statute of limitations of Minnesota.

ARGUMENT.

I.

Jurisdiction of this Court.

The federal questions sought to be raised by the assignments of error were distinctly and repeatedly called to the attention of the trial court. As shown in the statement of facts the plaintiff in error distinctly raised and relied upon them in his pleadings. The jurisdiction of this court is settled, we think, by two recent cases: *Savings and Loan Society v. Multnomah County*, 169 U. S. 421, 423; *Dewey v. Des Moines*, 173 U. S. 193, 200-202.

II.

Were the assessments or any of them valid?

The learned District Judge decided this case on the authority of *Savings & Loan Society v. Multnomah County*, which held the Oregon statute taxing mortgages as real estate valid, although the owner resides in another state. The learned Judge remarks (Transcript, p. 40):

> "The fact that the Oregon statute taxes mortgages on land as real estate is of no importance and merely formal, as the case con-

> cedes that by the law of Oregon a mortgage of land conveys no legal title and creates only a lien or incumbrance for the security of the debt."

We very much misunderstand the Multnomah County case if this is true. If the fact that the Oregon statute taxed mortgages as land was purely "formal and of no importance," why did this court find it necessary to devote three pages of the opinion to an explanation of the Oregon statutes and to emphasis of the fact that under those statutes the debt was not taxed, the effect of the statute being to tax the land only. As shown by the court in the opinion (pp. 423-4-5) the Oregon statute provided that a mortgage should, "for the purposes of assessment and taxation be deemed and treated as land or real property;" that in any assessment of land against the owner the amount of the mortgage was deducted; that "no promissory note or other instrument of writing, which is the evidence of" (the debts secured by the mortgage) "shall be taxed for any purpose within this state." The court says on page 425:

> "Taking all the provisions of the statute into consideration, its clear intent and effect are as follows: The personal obligation of the mortgagor to the mortgagee is not taxed at all. The mortgage and the debt secured thereby are taxed, as real estate, to the mortgagee, not beyond their real cash value, and only so far as they represent an interest in the real estate mortgaged. The debt is not taxed separately, but only together with the mortgage; and is considered as indebtedness within the state for no other purpose than to ena-

ble the mortgagor to deduct the amount thereof from the assessment upon him, in the same manner as other indebtedness within the state is deducted. And the mortgagee as well as the mortgagor is entitled to have deducted from his own assessment the amount of his indebtedness within the state.

"The result is that nothing is taxed but the real estate mortgaged, the interest of the mortgagee therein being taxed to him, and the rest to the mortgagor. There is no double taxation. Nor is any such discrimination made between mortgagors and mortgagees, or between resident and non-resident mortgagees, as to deny to the latter the equal protection of the laws."

Again, the court said on pages 427-8:

"The state may tax real estate mortgaged, as it may all other property within its jurisdiction, at its full value. It may do this, either by taxing the whole to the mortgagor, or by taxing to the mortgagee the interest therein represented by the mortgage, and to the mortgagor the remaining interest in the land. And it may for the purposes of taxation, either treat the mortgage debt as personal property, to be taxed, like other choses in action, to the creditor at his domicil; or treat the mortgagee's interest in the land as real estate, to be taxed to him, like other real property, at its situs." *Firemen's Ins. Co. v. Commonwealth*, 137 Mass. 80, 81; *State v. Runyon*, 12 Vroom, (41 N. J. Law) 98, 105.

Again, on page 431 the court again dwells upon the Oregon statute, saying that it expressly forbids any taxation of the note or other instrument in writing which is the evidence of the debt, and with equal distinctness provides for the taxation, as real estate, of the mortgage interest in the land, saying further:

> "Although the right which the mortgage transfers in the land covered thereby is not the legal title, but only an equitable interest and by way of security for the debt, it appears to us to be clear upon principle, and in accordance with the weight of authority, that this interest, like any other interest legal or equitable, may be taxed to its owner (whether resident or non-resident) in the state where the land is situated, without contravening any provision of the Constitution of the United States."

The court explained the case of *State Tax on Foreign Held Bonds*, 15 Wall. 300, by saying that it became important to notice exactly what was there decided; that in that case the tax imposed, held to be invalid, was a tax on the interest due to the bondholders upon the bonds and not a tax upon the railroads or upon the mortgage thereof, or upon the bondholders solely by reason of their interest in that mortgage. The court disapproved of so much of the opinion in that case as holds that a mortgage is a mere security for a debt and cannot be treated by the state tax laws as an interest in land.

No one can read the opinion in the Multnomah County case without being impressed with the importance which this court gave in reaching its decision to the peculiar Oregon statute: without being convinced that the very gist of the decision, the fundamental reason which underlies it, is that the taxation in that case was a taxation of real estate and that a legislature has a right if it so chooses to regard the interest of a mortgagee in

land as real estate for the purposes of taxation.

But we have been careful in the statement of facts to show that in Minnesota the statute taxes first the whole interest in the land, including the mortgagee's interest, to the owner of the fee or equity; second, in addition taxes the *credit* or *indebtedness* due from mortgagor to mortgagee as a chattel; thus bringing this case squarely within the decision in the *Case of State Tax on Foreign Held Bonds*, 15 Wall. as that decision is explained and limited in the Multnomah County case.

It is one thing to hold that a state may tax a mortgage interest as real property, thus creating a claim which can be enforced only against the mortgage itself, and quite another thing to hold that a state can levy a personal assessment against a non-resident, which results, not in a lien upon his property situated in the state enforceable only against that property, but in a personal debt which may be sued and result in a personal judgment against him. This latter is the kind of tax we are considering and the kind of judgment brought here for review. The difference between the Multnomah County case and this case is wide and radical and cannot be regarded as "of no importance and merely formal." The first kind of tax is within the power of the state because it results in subjecting the property of non-residents within the state to the lien of taxes; the second is beyond the power of the state because it is an attempt to exercise a taxing power and jurisdiction over the per-

sons of non-residents. The difference and distinction is vital and we regard the decision of this court in the Multnomah County case, and particularly the reasoning of the opinion, as the best of authority for saying that the tax here in question is invalid.

It will be noted that in the Multnomah County case this court was careful to show and to state that the statute of Oregon did not result in double taxation; while here it is plain that the statute of Minnesota does result in double taxation. While double taxation is not necessarily in conflict with the Constitution of the United States, it is important to point out that our contention does not deprive the state of any right which it ought in equity and justice to have, and does not permit any property in the state to escape taxation; for these credits have been once assessed against the Minnesota owners of the lands on which they were secured.

Unless the Multnomah County case can be considered as overruling the previous decisions of this court, we think the question here at issue is settled by those decisions.

In *McCulloch v. Maryland*, 4 Wheat. 316, 329, Chief Justice Marshall delivering the opinion, said:

> "All subjects over which the sovereign power of a state extends are objects of taxation, but those over which it does not extend are upon the soundest principles exempt from taxation. This proposition may almost be pronounced self-evident."

In the case of *Railroad Co. v. Jackson*, 7 Wall. 262, it was held that the State of Pennsylvania could impose no tax upon railroad bonds held by non-residents. The reason given by Justice Nelson for the decision has been criticised (and properly so) in *Case of State tax on Foreign-held Bonds*, 15 Wall. 300, but the decision was there approved.

In *St. Louis v. Ferry Co.*, 11 Wall. 423, the state of Missouri attempted to tax the ferry boats of the Ferry Company plying between St. Louis and the opposite shore of the Mississippi in the state of Illinois. The boats were habitually kept in Illinois except when they touched at St. Louis in prosecution of the business of the company. Held, that the boats were not taxable in Missouri. Justice Swayne, delivering the opinion, said:

> "Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the legislature of a state should enact that the citizens or property of another state or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

So the court said in *Erie Railroad Co. v. Pennsylvania*, 153 U. S., 646;

> "No principle is better settled than that the power of a state, even its power of taxation in

respect to property is limited to such as is within its jurisdiction."

This court said in the *Case of State Tax on Foreign-held Bonds,* 15 Wall. 300:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

Again, the court said in that case:

"Corporations may be taxed, like natural persons, upon their property and business. *But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of cor-*

porations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement.

"The bonds issued by the railroad company in this case are undoubtedly property, but property in the hands of the holders, not proprety of the obligors. So far as they are held by non-residents of the state they are property beyond the jurisdiction of the state."

These principles are left unmodified by the Multnomah County case and are controlling here unless the *Case of State Tax on Foreign-held Bonds* is to be overruled.

Since the decision in the Multnomah County case this court has considered the case of *Dewey v. Des Moines*, 173 U. S., and said (p. 203):

"The jurisdiction to tax exists only in regard to persons and property or upon the business done within the state, and such jurisdiction cannot be enlarged by reason of a statute which assumes to make a non-resident personally liable to pay a tax of the nature of the one in question. All subjects over which the sovereign power of the state extends are objects of taxation. Cooley on Taxation, 1st ed., pp. 3, 4; Burroughs on Taxation, sec. 6. The power of the state to tax extends to all objects within the sovereignity of the state. (Per Mr. Justice Clifford, in *Hamilton Company v. Massachusetts*, 6 Wall. 632, at 638). The power to tax is however limited to persons, property and business within the state, and it

cannot reach the person of a non-resident. *State Tax on Foreign-held Bonds,* 15 Wall. 300, 319. In Cooley on Taxation, 1st ed., p. 121, it is said that 'a state can no more subject to its power a single person or a single article of property whose residence or legal situs is in another state, than it can subject all the citizens or all the property of such other state to its power.' These are elementary propositions, but they are referred to only for the purpose of pointing out that a statute imposing a personal liability upon a non-resident to pay such an assessment as this oversteps the sovereign power of a state."

Judge Cooley in his work on Taxation says (p. 15):

"But debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor cannot be taxed because he is not within the jurisdiction and the debts cannot be taxed in the debtor's hands through any fiction of the law which is to treat them as being for this purpose the property of the debtors. They are not property of the debtors in any sense; they are the obligations of the debtors and only possess value in the hands of the creditors. With them they are property, but to call them property in the hands of the debtors is simply to misuse terms."

On page 42 he says:

"It has already been seen that persons and property not within the territorial limits of a state cannot be taxed by it. In such a case the state affords no protection and there is nothing for which taxation can be an equivalent. But where a person is a resident within a state his personal property in contemplation of law accompanies him and he may be required to pay taxes upon it wherever it is

situate, while the real estate of a non-resident is always taxable where it is. It is competent also for any state to provide that tangible personal property situate within it may be taxed there irrespective of the residence of the owner and sometimes state laws provide for such taxation."

On page 65 he says:

"To tax in one state contracts owned in another is held to impair their obligation and consequently to be inadmissible even though they are made and payable in the state imposing the tax and are secured by mortgage in that state."

It is to be observed and borne in mind that if this tax is sustained the result is not only double but treble taxation. First, taxation of the whole value of the land against the owner; second, taxation under the law of Minnesota of the mortgagee's loan; third, taxation under the law of New York of the same interest. The latter taxation has been held good in *Kirtland v. Hotchkiss,* 100 U. S. 491, and is authorized under the laws of New York of 1883, chap. 329, which reads as follows:

"All debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held, shall be deemed for the purposes of taxation personal property within this state, and shall be assessed as such to the owner or owners thereof in the town, village or ward in which such owner or owners shall reside at the time such assessment shall be made."

See *Darrow v. Coleman,* 119 N. Y. 137.

It will also be noted that the statute of Minne-

sota (sec. 1510) authorizes taxation of "all moneys at interest either within or without this state, due the person to be taxed."

It is rather curious that these taxes had been in arrears from 1883 to 1894 and apparently no effort made to collect them. Then Sophia M. Bristol died, and owning real estate in Minnesota her will was probated there. The county came in and proved an alleged indebtedness against her as a claim against her estate. Suppose she were alive, how could the county collect its alleged taxes in that case? If she never came into the state of Minnesota she could not be served personally with process there. Could the county have gone to the state of New York and succeeded in the courts of that state or in the federal courts in maintaining an action against her? Could the county have brought a suit in Minnesota and obtained jurisdiction by publication and attachment of her indebtedness against the Minnesota mortgagors, represented as it was by promissory notes? How could it seize such indebtedness? How could it bring it under the jurisdiction of the courts in Minnesota? The courts of that state at most could have obtained no jurisdiction except to the extent of some tangible property in that state seized by process. *Pennoyer v. Neff*, 95 U. S. 714; *Mexican Central Railway Co. v. Pinkney*, 149 U. S. 194, 209.

If there is a right to levy this tax there must be some manner of collecting it. Unless some property of Mrs. Bristol could have been seized in Minnesota collection could not have been enforced in

that state; *and unless the laws of that state and the assessment thereunder created a good personal claim against her* the county could not have taken the claim to New York and maintained a suit against her in the courts of that state; nor could the county have maintained any suit in Minnesota except to enforce a lien on the very property taxed. The practical impossibility of enforcing the alleged claim under ordinary circumstances, under any known rules of law and practice is a strong argument to show that no valid claim existed.

III.

Neither the state of Minnesota, nor any exercise of the taxing power under its authority, could create a valid personal claim against this non-resident. Any taxation against her in Minnesota could be enforced as a lien against the very property taxed only, and the court at least erred in rendering a personal judgment. This we think is settled by *Dewey v Des Moines,* 173 U. S. 193. That case related to a piece of land in Des Moines, but the rule would have been the same if the taxation had been upon Dewey's horse in Des Moines, or upon a debt which he held against a resident of Des Moines. The language of the court in *Tappan v. Merchants' National Bank,* 19 Wall. 490, must be construed with reference to the facts in that case, which show that the state authorities were attempt-

ing to enforce a tax only against the property itself which was taxed.

It is true no judgment except a personal one could be entered in this case. The proceeding was commenced on the theory that the taxes were a personal claim against Sophia M. Bristol and after her death against her representatives---and there are not sufficient allegations in the complaint to sustain an action *in rem* to enforce a claim against the property. It is not alleged or found that the taxed property was in court or in existence.

IV.

The foregoing considerations must, we think, dispose of the case; but it may not be out of place to consider some of the decisions in the state courts; and to consider more particularly the effect of the notes being after 1885 kept by the payee in New York.

The property assessed was not within the jurisdiction of the state of Minnesota for the purposes of taxation.

It does not necessarily follow that the judgment in this case is valid if it should be determined that the property assessed was at the time of the assessment within the jurisdiction of the state, for, as we have already explained, the tax in this case is against the person, not against the property; the defendant in error is seeking to enforce a claim

against the personal representative of Sophia M. Bristol and not against the property, and the judgment that has been rendered is against such representative and not against the property.

But it does follow that the judgment is erroneous if the property taxed was not within the jurisdiction of the state when it was assessed, for Mrs. Bristol was not within the jurisdiction of the state, and to compel her to pay taxes on property also not within the jurisdiction would be depriving a person of property without due process of law.

It is claimed by the defendant in error that while the general rule is that the situs of intangible property, such as credits based on notes, bonds, contracts for the payment of money, etc., is at the domicile of the owner, yet there is an exception to this general rule in case such property is in the possession and under the exclusive control of a resident agent who has authority to collect such debts, reloan the funds, and that the admitted facts in this case are such as to bring the property taxed within the exception.

In reply, we assert, *first*, that while there are some authorities which make such an exception, they are not sound in principle, and *second*, that the admitted facts in this case are such as show that the property assessed was not within the exception, at least, not since March, 1885.

(*a*) Is there any exception to the general rule that intangible property has its situs at the domicile of the owner in case of ordinary notes and con-

tracts for payment of money, which are in the hands of a resident agent, who has authority to collect and reloan the money?

It must be admitted that there are decisions of some state courts holding the doctrine that there is such an exception. Other state courts have denied this rule, and adhere strictly to the rule laid down in the case of *State Tax on Foreign-held Bonds,* that the situs of intangible property for the purpose of taxation is at the domicile of the owner.

The Supreme Court of Wisconsin in the case of *State ex rel. Dwinnell v. Gaylord,* 73 Wis. 316, has directly refused to follow the doctrine that, where notes or evidences of debt are held by an agent for collection and re-investment, the situs for taxation is with the agent.

The Supreme Court of Connecticut holds to the same effect in *Kirtland v. Hotchkiss,* 42 Conn. 426.

The Court of Appeals of New York and the Supreme Court of Alabama have refused to apply the doctrine where the principal and agent both reside in the state. *Boardman v. Supervisors,* 85 N. Y. 360; *Boyd v. Selma,* 96 Ala. 144.

This is a question upon which the highest courts of different states are divided. It is a question which must ultimately be decided by this court, as it necessarily involves a federal question.

Taxation of such property belonging to a non-resident, if the true situs of the property is out of the jurisdiction of the state, is taking property without due process of law.

To say that the situs of a debt is with the agent who has control of it, or with the owner is, in either case, a legal fiction. A debt is an intangible thing. It is important, however, that some uniform rule should be established, and we claim that the rule held by those courts, which adhere strictly to the rule laid down by this court, that the situs of such property is at the domicile of the owner, is better in practice and more conducive to justice between the various states and citizens of other states doing business in them than the other rule. The doctrine that the situs of such property is at the place of residence of the agent results almost always in double taxation where the agent lives in one state and the principal in another. Almost every state claims and exercises the right to tax its own citizens on his intangible property, such as debts due him, whether it is controlled by an agent who resides in a foreign state or not.

The case of *People v. Smith,* 88 N. Y. 577, was in marked contrast to the general rule and held that the situs of debts in the control of an agent in another state was where the agent was, and that there was no state statute in New York authorizing such property to be taxed there.

The next session of the legislature promptly nullified the effect of that decision by providing that such property should be taxed in New York. *Chap.* 392 *Gen. Laws of New York, of* 1883.

The Court of Appeals of New York in the case of *People ex rel Darrow v. Coleman,* 119 N. Y. 137,

state that this law was passed to meet the effect of the prior decision.

A court should not invent a fiction of law, which is of necessity an instrument of injustice. The rule localizing credits at the debtor's residence tends to discourage interchange of business between the various states. A person who attempts to invest money in a state other than that where he lives is thereby rendered liable to double taxation and is thus put at a disadvantage in competition with persons who happen to live and do business in the same state, whereas, under the rule that such property is taxable only where the owner lives there is no injustice done; each state may tax its own citizen upon such property.

(*b*) But even conceding that there is such an exception to the general rule where the debts, notes and contracts are in possession of and under the absolute control of a resident agent, and that in such cases the situs of the property is where the agent is located, yet the admitted facts in this case show that after March, 1885, the agent of Sophia M. Bristol did not have that absolute and unqualified control of the indebtedness on which these taxes were levied essential to give the indebtedness a situs in Minnesota. After March, 1885, the notes evidencing the indebtedness were kept by Sophia M. Bristol at her residence in the State of New York (Finding IV, Fol. 77, Transcript). And after November, 1890, her agent not only did not hold the notes, but he had no authority to satisfy mortgages (Finding V. Fol. 77, Transcript).

After these notes came into the possession of Mrs. Bristol and she held them in her own hands at her own home, she had not only the beneficial interest in the debts but she had the actual possession and control of them. She could deal with them as she saw fit, without conferring with her agent, and without any co-operation on his part. If she desired to sell or to pledge them as collateral security, she had only to indorse and deliver the paper in the usual course of business. She did not have to consult her agent in any manner and it is a misuse of terms to say that the situs---the location of the property in those debts---is anywhere but at the domicile of Mrs. Bristol. The very fact that the evidences of the debt are in the possession of the owner at her residence is inconsistent with the situs of the debt being at any other place. We do not intend to subscribe to the rule laid down in some cases that the place where such evidences of debt are kept always determine the situs of the debt. The situs of such debts is doubtless often at the domicile of the owner, even if the paper evidences of the debt are at another place. But we do claim that, where the *owner* of such debts has the evidences of debt in his possession and under his control at his domicile, their situs for the purpose of taxation cannot be at any other place.

This is as we understand the holding of this court in the case *State Tax on Foreign-held Bonds.* In the argument in that case counsel for defendant in error cited and quoted at length from the opinion in the case of *Catlin v. Hull,* 21 Vt. 158,

which is the leading case holding the doctrine that the situs of debts may be at the place where an agent has control of them. Yet this court, Justice Field writing the opinion, after stating that the situs of property, which has a visible, tangible existence, and also public securities, state bonds, bonds of municipal bodies and circulating notes of banking institutions, is at the place where they are found, says: "But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicile of the owner, *and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners.*"

In every case where it has been held that the situs of debts for the purposes of taxation is at the place where they were controlled by an agent, the evidences of the debts were in the possession of the agent, and this fact is considered of great importance as indicating that the agent has full control of the debts. Yet the District Judge states, in his decision in this case, that the fact that the notes were in the possession of Mrs. Bristol at her home in New York was immaterial and cites as authority the case of *Dundee Mortgagee Co. v. School District,* 19 Fed. Rep. 359. While there are some statements in the opinion of the court in that case to the effect that it was immaterial that the notes were in the hands of the owner, the point was not involved in the decision. In the first place, it was determined in that case that the taxes in question

were invalid on the ground that they were not uniform, and, in the second place, the taxes involved were taxes upon the interest of the mortgagees in real estate assessed where the real estate was situated, not taxes on the debt. They were not assessed at the place where the agent resided or did business, but where the land mortgaged was situated.

The other cases cited by the district court are *People v. Smith*, 88 N. Y. 576 and *In re Jefferson*, 35 Minn. 215, and the cases cited in the opinion of the court in the latter case.

In the case of *People v. Smith*, 88 N. Y. 576, the question was whether Jefferson was taxable in New York, where he lived, on account of notes and mortgages owned by him in the possession and under the control of his agents in Minnesota, Wisconsin and Illinois. The court held that, inasmuch as these securities were never brought within the territorial limits of the state of New York, but had always remained in the possession of the agents who had absolute control of them, the situs of the property represented by them was not in New York, and the taxes assessed against them were invalid.

The court in its opinion says:

> "The statute providing for the taxation of 'personal estate within this state' was not intended to subject to taxation personal securities actually in another state, held, managed and controlled there under the protection of the laws of that state and subject to taxation there in the hands of agents. It cannot be supposed that the legislature intended that our citizens should be subject to taxation here

> and in other states also upon the same property, or that it would tax in the hands of agents here securities belonging to non-resident owners while it denied the right of other states to tax the securities of our citizens in the hands of agents there."

And the opinion closes as follows:

> "It is clear from the statutes referred to and the authorities cited and from the understanding of business men in commercial transactions, as well as of jurists and legislators, that mortgages, bonds, bills and notes have for many purposes come to be regarded as proprety and not as the mere evidences of debts and that they may thus have a situs at the place where they are found, like other visible, tangible chattels. Without extending the discussion further, we are, therefore, of opinion that the judgment should be affirmed."

It is evident, from this opinion that if, in that case it had appeared that the notes evidencing the debts were in the possession of the owner at his home in New York, the decision would have been the reverse of what it was.

This case cites as authority on this proposition the case *People v. Trustees,* 48 N. Y. 390, which case was also cited in the opinion *In re Jefferson.*

The principal question in *People v. Trustees* was whether certain contracts for the sale of land which belonged to Parish, a resident of Bohemia, and were in the hands of Westbrook, his general agent at Ogdensburg, N. Y., could be taxed to Westbrook as agent for Parish. The court held that the situs of the property was where the contracts were held by the agent and they were therefore taxable. The court says:

> "Notes, bonds and other contracts for the payment of money have always been regarded and treated in law as personal property. They represent the debts secured by them. They are the subject of larceny and a transfer of them transfers the debt. If this kind of property does not exist where the obligation is held, where does it exist? It certainly does not exist where the debtor may be and follow his person. And while, for some purposes in the law, by legal fiction, it follows the person of the creditor and exists where he may be, yet it has been settled that for the purpose of taxation this legal fiction does not to the full extent apply and that such property belonging to a non-resident creditor may be taxed in the place where the obligations are held by his agent."

It is evident from the opinion of the court that the fact of the obligations being in the possession of the agent was considered essential to fixing the situs of the debts at the place where the agent was.

Another case cited is *People v. Gardner*, 51 Barb. 352. *Judge Daniels*, in the opinion of the court in that case says:

> "*If the securities are separated from the person and domicile of the owner* and are actually in the hands of an agent in another state for collection, investment and re-investment there, it may be that capital thus situated should be regarded as foreign and not domestic in the absence of any statutory provision intended for such a case."

This case lays particular stress upon the facts that the securities were separated from the person and domicile of the owner.

The cases of *Wilcox v. Ellis*, 14 Kans. 588; *Fisher*

v. Commissioners, 19 Kas. 414, and *Finch v. County of York,* 19 Neb. 50, all follow *People v. Trustees,* 48 N. Y. 390, and lay special stress upon the point that situs of the property was with the agent because the evidences of the debts were in his possession.

So in *Golgart v. People,* 106 Ills. 25, the court says:

> "And so in the case of the non-resident creditor not having parted with his credits, there is nothing here to tax, nothing here to which jurisdiction can attach. This is well settled by adjudicated cases * * * and must be peculiarly so in the case of negotiable instruments. They are the subject of larceny and their indorsement transfers the credits of which they are the evidence. They are regarded as property and, of course, this must be property having its situs where they are lawfully held."

Another case cited in *In re Jefferson* is *Redmond v. Commissioners,* 87 No. Car. 122.

It was here held that, where a resident agent sold lands for a non-resident principal and kept the contracts in his possession and they were under his exclusive control, the property in the contracts was taxable in North Carolina.

But the same court in *Railroad Co. v. Commissioners,* 91 N. C. 454, commenting on the Redmond case, says, pp. 457-8, that credits must be taxed at the owner's domicile, "except in cases where the indebtedness consists in notes, bonds or other securities which are in the hands of an agent and are therefore like visible personal property, having a situs of its own for purposes of taxation, as held in *Redmond v. Commrs.*"

In the cases of *Catlin v. Hull* 21 Vt. 152 and *In re Jefferson*, 35 Minn. 215, securities comprising the evidences of indebtedness were in the possession of the agent.

So, in the recent case in the United States Circuit Court of Appeals of the Sixth Circuit, *Walker v. Jack*, 31 C. C. A. Reports 462, 88 Fed. Rep. 576, the court holds that debts of a non-resident owner, where the investment is under the control of a resident agent, may be taxed where the agent is located, and the court adds, after stating the rule and the authorities, "*In such cases the circumstance that the agent has in his possession the evidence of the indebtedness is regarded as of importance.*"

We have thus referred to the language of the opinions of these cases to show that the courts, which have held that debts may have a situs at a place other than the domicile of the owner, have regarded as essential to the application of the rule, that the securities, which evidence the indebtedness, should be in the possession of the agent, or at least should not be in the possession of the owner at some other place, and they therefore are in harmony with the rule stated by this court in *State Tax on Foreign Held Bonds*, already quoted, that debts can have no situs independent of the domicile of the owner when the instruments constituting the evidences of the debts are not separated from the possession of the owner.

In view of the fact that the evidences of debts in this case were *promissory notes*, it is important to take into consideration the law in Minnesota which

is in this respect somewhat different from that of some other states.

In Minnesota, a promissory note is property. It is regarded in many respects as the debt itself. The debt evidenced by a promissory note may be subjected to a levy of a writ of attachment or execution by simply taking possession of the instrument. *Mower v. Stickney,* 5 Minn. 397; *Swart v. Thomas,* 26 Minn. 141.

The mortgage is a mere security for the debt represented by the note and a transfer of the note carries with it the mortgage.

Taxes in Minnesota are assessed annually on personal property as of the 1st day of May of each year. *Gen. Statutes of Minnesota of* 1894, *Sec.* 1514.

The promissory notes which were the evidences of the debts taxed were in the possession of Mrs. Bristol at her home, May 1, 1885, when the tax of that year was levied, and every year thereafter, and the debts could not have had a situs for the purpose of taxation during that time in the State of Minnesota. After November, 1890, the agent in Minnesota did not have the authority to satisfy mortgages. This is another circumstance that shows more clearly that the debts after that time were under the control of Mrs. Bristol, their owner.

We wish also to emphasize the point that there is probably no state in the Union where it would be held that a resident of such state having negotiable notes representing debts due from citizens of another state in his own possession at his own home is not taxable therefor at his domicile; and it would

be a great injustice to make a rule that the situs of such property may also at the same time be at another place and also taxable there.

The debts taxed were, therefore, at all events, not within the jurisdiction of the State of Minnesota at the time the taxes for the years from 1885 to 1894, inclusive, were assessed.

V.

The remedy for the collection of the taxes for the years 1883 to 1888, inclusive, was barred by the statute of limitations of the State of Minnesota at the time the claim of Washington County was filed in the office of the Probate Court of Ramsey County.

This statute of limitations was pleaded by the defendant in his answer (Transcript, fol. 60.) See also Assignment of Error, No. 7, in this Brief.

Sophia M. Bristol died in August, 1894 (Finding XI, Fol. 80, Transcript).

Her will was admitted to probate by the Probate Court of Ramsey County, Minnesota, October 19th, 1894 (Finding XII, Fol. 80, Transcript).

Washington County filed its claim for taxes in said Probate Court April 18th, 1895 (Finding XII, Fol. 80, Transcript).

The statutes of Minnesota that are material to be considered on this point, are the following:

The Statute of Limitatons, *Title* 2, *Chap.* 66, *Gen. Stat. of Minnesota of* 1894. Section 5133 reads as follows:

"Actions can only be commenced within the periods prescribed in this chapter after the cause of action accrues, except where in special cases a different limitation is prescribed by statute."

Section 5136: Within six years.

"First---An action upon a contract or other obligation, express or implied, excepting those mentioned in the preceding section." (The preceding section refers to judgments.)

"Second---An action upon a liability created by statute other than those upon a penalty or forfeiture."

Section 1541, Gen. Statutes of Minnesota of 1894, provides that the assessor shall assess the value of all property during the months of June and July in each year.

Section 1557 provides that state taxes shall be levied on or before the first day of October annually, county taxes in July of each year and city, town and school district taxes on or before October 10th of each year.

Section 1562 reads as follows:

"The county auditor shall deliver the lists of the several districts of the county to the county treasurer on or before the first Monday in January in each year, taking his receipt therefor, showing the total amount of taxes due upon the said lists, and such lists shall be full and sufficient authority for the county treasurer to receive and collect taxes therein levied."

Section 1567. "All unpaid personal property taxes shall be deemed delinquent on the first day of March next after they become due and thereupon a penalty of ten per cent shall attach and be charged upon all such taxes. On

the first day of April in each and every year the county treasurer shall make a list of all such delinquent personal property taxes which he shall certify to the clerk of the district court of his county and the said clerk shall immediately issue his warrants to the sheriff of the county, directing him to proceed to collect the same and if such taxes are not paid upon demand said sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes if found within the county, to pay the same, with the penalty of ten per cent. and all accruing costs."

Section 1568 provides that if the sheriff is unable to collect said taxes by distress he shall file with the clerk of the court on the first day of June following a list of taxes not collected and return the warrants, and that the clerk shall deliver such list to the board of county commissioners at their first session thereafter and they shall cancel such taxes as they are satisfied cannot be collected.

Section 667, Gen. Statutes of Minnesota of 1894, provides that the boards of county commissioners shall meet at the county seat of their respective counties on the first Tuesday after the first Monday in January and on the second Monday in July of each year.

Section 1569 provides:

"Within ten days after the adjournment of the board of commissioners, the auditor shall file a copy of said revised list with the clerk of the district court of the county, and within ten days after the filing of such copy the clerk shall issue and deliver to the sheriff of the county where the person, against whom such tax is claimed, may at the time reside, or be for service, a citation to each delinquent named on the

> list, stating the amount of the tax and penalty, and requiring such delinquent to appear on the first day of the next general term of the district court in the county appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause, if any there be, why he should not pay said tax and penalty, and if he fails to pay said tax, penalty and cost to the sheriff before the first day of the term or on said day to show cause as aforesaid, the court shall direct the clerk to enter judgment against such delinquent for the amount of such tax, penalty and cost."

From the foregoing statutes it appears that if the taxes were valid, Washington County had the right to proceed to distrain the property and enforce the lien thereon on the first day of April following the year when the tax was assessed and levied in each case, and that it had the right to cite the person taxed into court and apply for personal judgment in the month of July of each year after the tax was levied and assessed.

The action in this case is in form a proceeding to collect a personal claim against the personal representatives of Sophia M. Bristol. We have already shown that Sophia M. Bristol was not a resident of the State of Minnesota and, therefore, the state had no jurisdiction to levy a personal tax against her. These taxes were at all events then not a personal claim against her. It may be claimed, however, that this action may be considered an action against the property, a proceeding *in rem*. If it is possible to so construe the action, and we do not admit that it is, then the action is barred by the statute of limitations so far as it relates to the taxes assessed in

the years 1883, 1884, 1885, 1886, 1887 and 1888. The right of the state to proceed to enforce its lien against the property for the tax of 1888 commenced April 1st, 1889. This action was not commenced until the claim was filed in the Probate Court April 18th, 1895, after the six years' limitation had expired.

The statute of limitations of six years on an action to enforce a liability created by statute applies to proceedings to enforce taxes in Minnesota against the property taxed. *County of Redwood v. Ry. Co.*, 40 Minn. 512.

In this case it appears that certain lands not having been taxed were in 1886 assessed and a tax levied for each year for about fifteen years prior to that time. On an application for a judgment against the land, the owners of the land objected on the ground that the statute of limitations had run as to all taxes where the application for judgment could have been made six years or more prior to the time it was made if the land had been taxed at the time it should have been taxed under the statute, and the court sustained the objection, reversing a former decision, *County of Brown v. Winona Co.* 38 Minn. 397. The court held that by statute in Minnesota, the statute of limitations runs against the state the same as against an individual. That a tax was a liability created by statute. That while the statute of limitations in terms applies only to "actions," they are to be construed liberally and applied to all proceedings that are analogous in their nature to actions "so as to make the right sought to

be enforced, and not the form of procedure, the test as to whether or not the statute applies. Upon this principle they are held to apply to all claims which may be the subject of actions, however presented, also that they furnish a rule for cases analogous in their subject matter, but for which a remedy unknown to the common law has been provided. They have also been applied by analogy to proceedings in admiralty, to claims in bankruptcy, or in the probate court, although not within the strict letter of the statute."

See also *Mower County v. Crane*, 51 Minn. 201; *Pine County v. Lambert*, 57 Minn. 203; *State v. Norton*, 59 Minn. 424.

It is claimed that the statute of limitations did not run against a proceeding to collect these taxes for the reason that Sophia M. Bristol was, when the cause of action accrued, not a resident of the state and continued such down to her death. Sec. 5145 Gen. Statutes of Minnesota of 1894.

If these taxes were a valid personal claim, this might be a defense to the statute. If, however, this action can be construed as a proceeding *in rem* to enforce a lien against the property, then the statute has run as above stated as to the taxes of 1888 and prior years, for the property has at all times since the levy been as much within the state as it was at the time the taxes were levied, and the absence of Mrs. Bristol is no defense to the statute running as to a proceeding *in rem* against the property.

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